IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13389 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITIN VINDULAL SHAH

Versus

UNION OF INDIA

Appearance:
MR TUSHAR HEMANI for MR SN SOPARKAR for Petitioner
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this petition under Article

226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the order dated August 8, 2000 passed by the prescribed authority rejecting the application submitted by the petitioner under Section 80-RRA of the Income Tax Act, 1961 (`the Act' for short).

2. The petitioner is a consultant in the fields of energy conservation and cogeneration. He is also a member of Energy Sub-Committee of Confederation of Indian Industry. Based on his reputation and specialized knowledge in the energy fields, he was offered an assignment as Country Manager by the American Company for the business development of their power generation equipments. The petitioner rendered services to AGC Project Development Inc., an Oklahoma Corporation and received remuneration in foreign currency. According to the petitioner, he is entitled to deduction in respect of remuneration received for services rendered outside India and, therefore, submitted an application under Section 80-RRA of the Act claiming deduction. The prescribed authority has rejected the application on the ground that scrutiny of the agreement did not indicate that the petitioner had worked abroad so as to qualify for deduction under section 80-RRA of the Act. The order rejecting the application submitted by the petitioner under Section 80-RRA is produced at Annexure "A" to the petition.

The petitioner has contended that in order to claim deduction in respect of remuneration received for services rendered outside India, it is not necessary for an assessee to physically go outside India and render services, but can claim deduction even if the services are rendered from India. The grievance raised in the petition is that the impugned order was passed without affording opportunity of being heard to the petitioner and recording reasons in support thereof. Under the circumstances, the petitioner has filed the present petition and claimed relief to which the reference is made earlier.

3. We have heard the learned counsel for the parties. A bare perusal of the order impugned makes it manifest that no hearing was afforded to the petitioner nor reasons are recorded by the prescribed authority while passing the said order. Having regard to the facts of the case, we are satisfied that in order to resolve the dispute whether deduction in respect of remuneration received for services rendered outside India by the

petitioner is allowable or not, hearing ought to have been afforded to the petitioner and reasons ought to have been recorded by the prescribed authority. In view of the above conclusion, the impugned order is liable to be set aside.

4. For the foregoing reasons, the order dated August 8, 2000 rendered by the prescribed authority rejecting the application submitted by the petitioner under Section 80-RRA of the Act is set aside and quashed. The petitioner is directed to make elaborate representation before the prescribed authority indicating as to how he is entitled to deduction in terms of Section 80-RRA of the Act. The prescribed authority is directed to decide the application submitted by the petitioner under Section 80-RRA after taking into consideration the representation which may be made by the petitioner. The petitioner shall make the representation within three weeks from today. The prescribed authority shall decide by a speaking order as early as possible and preferably within two months from the date of receipt of the representation. It is clarified that if the prescribed authority feels that it is necessary to accord personal hearing to the petitioner, it would be open to the said authority to call upon the petitioner to remain present before it for presenting his case personally.

5. Subject to the foregoing directions, the petition succeeds. Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-